(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

WRIT PETITION NO. 614 OF 2003

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri M. B. Da Costa, Senior Advocate with Shri J. A. Lobo, advocate for the petitioners.

Ms. A. Razak, advocate for respondent nos. 1 to 3.

CORAM : SMT. NISHITA MHATRE, J.

DATE : 9th January, 2004

P.C.:

The petitioners impugn the Order of the Appellate Court refusing to grant temporary injunction in favour of the petitioners. The petitioners claim to be owners of survey no.123/34. Certain documents were produced by them before the trial Court on which basis the trial Court granted them temporary injunction and directed that the respondents should not interfere with the property of the petitioners. Aggrieved by this Order, the respondents filed an appeal before the District Court.

The District Court took the view that the petitioners have not been able to establish their title prima facie and, therefore, no injunction could be granted in their favour. This conclusion was drawn by the District Court as the name of one Alexinho Paes appears in the occupants column in Forms I and XIV of survey no.123/34, having an area of 15 sq. mts. According to the Appellate Court the presumption under Section 105 of the Land Revenue Code, 1968, is that the heirs of Alexinho Paes were presumed to be in possession. Both the petitioners and the respondents claim title to this land.

The petitioners claim to be owners through their ancestors who had bought the property and the respondents claim to have purchased the plot from the son of Alexinho Paes. Although I am not setting aside the Order of the Appellate Court, all the respondents shall

give an undertaking to this Court that they will not chop off any of the trees which are existing in survey no.123/34. The undertaking should also state that they will not put up any temporary or permanent construction in the plot. This undertaking be filed in this Court within one week from today.

As the suit is of the year 2000 and as the parties are of advanced age, the trial Court is directed to dispose of the suit as expeditiously as possible.

SMT. NISHITA MHATRE, J.

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